

Federal Court



Cour fédérale

Date: 20150706

Docket: IMM-6893-14

Citation: 2015 FC 824

Ottawa, Ontario, July 6, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**RODOLFO VALDEZ SAURE
MILAGROS CAMANT SAURE
(A.K.A. MILAGROS CAMANTIGUE SAURE)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, a married couple, are citizens of the Philippines. In 2006, they borrowed 1.7 million pesos from Conchita and Benjamin Velenzuela. The debt had an interest rate of 5% per month, compounded. After the first year, they could no longer make payments.

[2] In 2007, the lenders demanded payment on the claimant's home as payment for interest due. The applicants abandoned their home and fled to Canada in 2008.

[3] After their six month visitor's visa expired, they were not granted an extension. The applicants remained in Canada for another three and a half years before filing an application for permanent residence on humanitarian and compassionate grounds. When that application was refused, the applicants then made a claim for refugee protection. They stated that they feared that their lenders would use their connections to have them criminally convicted of "estafa" (which seems to be akin to criminal fraud) and they would be imprisoned in inhumane conditions where they would be at risk of assault, disease, and possible death.

[4] The applicants claim was assessed and rejected by the Refugee Protection Division [RPD] under section 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA]. Section 96 of IRPA was not considered because they acknowledged there was no nexus to a Convention ground.

[5] During the hearing, the RPD asked the applicants why they did not just declare bankruptcy. The applicants stated that there are no bankruptcy laws in the Philippines. They offered no documentation to substantiate that claim. Their counsel in closing submission stated that he believed they were correct in saying that there is no bankruptcy law in the Philippines. At the conclusion of the hearing, the RPD reserved its decision stating that "there are a few things that have come up during the hearing and that counsel has spoken on that I want to

check.” The RPD conducted internet research and did find that there were bankruptcy and insolvency laws in the Philippines and those laws did not provide any penalty for bankruptcy.

[6] The RPD then went on to consider the worst scenario - jail time - and whether it would amount to cruel and unusual treatment or punishment. The RPD, whose analysis was admitted not to be a model of clarity, concluded that it was reasonable to expect that the applicants should have known that they would never be able to repay their loan with such usurious rates. Further, it found that they unreasonably never applied for a bank loan because the process was too long and they required the money fast. The RPD found that even if this excuse was found to be reasonable, which it did not, it was unreasonable to not start the bank loan process and when it was completed pay off the initial loan from the lenders.

[7] In the end, the RPD “having perused the Philippine bankruptcy or insolvency law, [found] there would be no cruel or unusual treatment or punishment for these claimants should they return to Philippines.”

[8] The RPD concluded that there was no credible basis to the claim made by the applicants pursuant to section 107(2) of the *IRPA*.

[9] The applicants submit that the RPD, in relying on the extrinsic evidence it found using the internet, and which it did not put it to the applicants, breached procedural fairness.

[10] In *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 (CA), the Court of Appeal held that documents relied upon from public sources in relation to general country conditions which were publicly available and accessible did not have to be put to an applicant. The internet research of laws in the Philippines falls within that description. Moreover, the issue of the laws of bankruptcy in the Philippines was initially raised by the applicants themselves and later referenced by their counsel. Further, the RPD itself alerted the applicants when the decision was taken under reserve that it wished to check on some things (like the bankruptcy laws) that had come up during the hearing. There was no breach of procedural fairness.

[11] The applicants, in an affidavit filed in this application note that paragraph 18(g) of the legislation considered by the RPD provides as an exception to the bankruptcy protection that “any criminal action against individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under this Act.” They submit that this means that the lender can still use the estaffa process to have them jailed. The RPD concluded that that jail time was not a possibility because he had pursued the bankruptcy laws of the Philippines.

[12] It is not clear from the record whether the RPD or the applicants are correct in their respective interpretations of the law of the Philippines as no evidence was lead on the issue and it appears to have arisen in the course of the hearing. Moreover, it is unclear whether the estaffa is a criminal action of the sort referenced in the legislation. In any event, given this uncertainty, it is impossible for the court to adjudicate whether the view of the RPD was or was not reasonable.

For that reason, it is unsafe to rely on the decision, and the matter must be remanded back to the RPD for determination, with the applicants being given the opportunity to lead evidence relating to what an estaffa is and whether the bankruptcy laws of the Philippines would prevent it from occurring.

[13] It may well be that the risk to these applicants remains entirely speculative even if an estaffa is possible; however, that is a matter for the RPD, and not this court.

[14] Neither party proposed a question for certification, nor is there one on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision of the RPD is set aside, the claim for protection under section 97 of the *Immigration and Refugee Protection Act* is remitted back to be determine by a different Member, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6893-14

STYLE OF CAUSE: RODOLFO VALDEZ ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 30, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: JULY 6, 2015

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